

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch**

**Ravi Video & Fiji Grocery,**

**Appellant,**

**v.**

**Case Number: C0207408**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a six month disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Ravi Video & Fiji Grocery (Appellant) by the Retailer Operations Division of FNS.

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278 in its administration of the SNAP, when it imposed a six month period of disqualification against Ravi Video & Fiji Grocery on February 1, 2019.

**AUTHORITY**

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.

**CASE CHRONOLOGY**

The Department of Agriculture conducted an investigation of the compliance of Ravi Video & Fiji Grocery with Federal SNAP law and regulations during the period August 23, 2018 through September 26, 2018. In a letter dated December 7, 2018, the Retailer Operations Division charged the Appellant with accepting SNAP benefits in exchange for merchandise which included ineligible nonfood items in violation of 7 CFR § 278.2(a). These SNAP violations

occurred on three out of six compliance visits. The letter further informed the Appellant that the violations warranted a disqualification period of six months as provided in 7 CFR § 278.6(e)(5).

In a response to the Retailer Operations Division of December 18, 2018, the Appellant replied to the charges therein indicating that the SNAP violations were inadvertently committed by a temporary store employee who was working at the store for the owner due to her mother-in-law passing away. The owner will ensure that all temporary employees are trained on the SNAP rules in the future. A SNAP disqualification will impose a financial hardship on the Appellant.

After considering the Appellant's reply and the evidence of this case, the Retailer Operations Division issued a Determination Letter dated February 1, 2019. The Determination Letter informed the Appellant that it was disqualified from the SNAP for a period of six months in accordance with 7 CFR § 278.6(a) and (e). The Determination Letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a hardship civil money penalty under 7 CFR § 278.6(f)(1). The Retailer Operations Division determined that the Appellant was not eligible for the hardship CMP in lieu of the six month disqualification because there were other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

In a letter postmarked February 8, 2019, the Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested an administrative review of this action. FNS granted the Appellant's request for administrative review by letter dated February 14, 2019. Upon acceptance of the administrative review request, implementation of the six month disqualification was held in abeyance pending completion of this review.

The record indicates that on February 8, 2019, the Appellant's counsel requested information and documents from FNS with regard to the agency's case against Ravi Video & Fiji Grocery pursuant to the Freedom of Information Act (FOIA). The record reflects that FNS provided a response to counsel's FOIA request, dated February 27, 2019, and received no further communication from the Appellant or counsel with regard to the agency's response.

## **STANDARD OF REVIEW**

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

## **CONTROLLING LAW AND REGULATIONS**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulations under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e) establish the authority upon which a disqualification may be imposed against a retail food store or wholesale food concern.

7 CFR § 278.2(a) states, inter alia:

Coupons may be accepted by an authorized retail food store only from eligible households . . . only in exchange for eligible food.

7 CFR § 271.2 states, inter alia:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.

7 CFR § 278.6(a) states, inter alia:

FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations.

7 CFR § 278.6(e)(5) states, inter alia:

Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as, but not limited to, the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

7 CFR § 278.6(f)(1) states, inter alia:

FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . the firm's disqualification would cause hardship to Food Stamp [SNAP] households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices.

### **SUMMARY OF THE CHARGES**

During an investigation conducted from August 23, 2018 through September 26, 2018, USDA conducted six compliance visits at Ravi Video & Fiji Grocery. A report of the investigation was provided to the Appellant as an attachment to the Charge Letter dated December 7, 2018. The investigation report included Exhibits A through F which provide full details on the results of each compliance visit. The investigation report documents that SNAP violations were recorded during three of the six compliance visits and involved the sale of a variety of items best described in regulatory terms as "major nonfood items". The exchange of these ineligible items for SNAP benefits is in violation of 7 CFR § 278.2(a).

## APPELLANT'S CONTENTIONS

The following represents a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration was given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In the reply to the Charge Letter, in the administrative review request, and in subsequent correspondence to FNS, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The SNAP violations were inadvertently committed by a temporary store employee who was working at the store for the owner due to her mother-in-law passing away. September 2018 was the only time that the owner was not present at the cash register as she was making preparations for a funeral. Some family guests who were in town for the funeral rang up the items, unknowingly, as they were unfamiliar with the SNAP. While the owner describes them as temporary cashiers, they were actually unpaid and unemployed family members and guests visiting during a difficult time. These family and friends were helping out the owner during a difficult time and were neither employed in some service or a body of employees that is a factor in business administration. None of the persons who helped were employed or paid by the owner or the store. It was neither possible for the owner to properly train family and friends in a short time while making funeral preparation, nor can this be mitigated in the future as this was a one-time occurrence.
- In the thirteen years that the Appellant has been participating in the SNAP, many investigators have routinely checked the store. None have been able to detect any fraudulent behavior or activity since 2011, where even the investigator at the time concluded that the sale of nonfood items took place inadvertently.
- The owner will ensure that all temporary employees are trained on the SNAP rules in the future. The Appellant has an effective policy and program to prevent trafficking, as at all other instances, the owner is personally present to oversee any SNAP transactions taking place.
- A SNAP disqualification will impose a financial hardship on the Appellant.
- While generally food store owners are responsible for acts of their employees, Kashif v. U.S., Case No. 14-cv-30180-MGM, 2016 WL 3886164 (D. Mass. May 12, 2016), the person who rang up the items were not store employees. They were also not, "personnel of the firm". 7 CFR 278.6(e)(1)(i). Because "personnel" is not defined in the regulations or statute, the ordinary meaning of the word governs. United States v. Edge, 989 F.2d 871, 878 (6<sup>th</sup> Cir. 1993). "Personnel" is "a body of persons employed in some service" or "a body of employees that is a factor in business administration". Webster's Third New International Dictionary 1687 (1971).
- A SNAP disqualification will impose a hardship on the SNAP customers who depend upon the Appellant for an important source of food.

## ANALYSIS AND FINDINGS

### SNAP Violations

The Appellant contends that the SNAP violations were inadvertently committed by a temporary store employee who was working at the store for the owner due to her mother-in-law passing away. September 2018 was the only time that the owner was not present at the cash register as she was making preparations for a funeral. Some family guests who were in town for the funeral rang up the items, unknowingly, as they were unfamiliar with the SNAP. While the owner describes them as temporary cashiers, they were actually unpaid and unemployed family members and guests visiting during a difficult time. These family and friends were helping out the owner during a difficult time and were neither employed in some service or a body of employees that is a factor in business administration. None of the persons who helped were employed or paid by the owner or the store. It was neither possible for the owner to properly train family and friends in a short time while making funeral preparation, nor can this be mitigated in the future as this was a one-time occurrence.

The Appellant's contentions cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. As owner of the store, the Appellant is liable for all violative transactions that occur at Ravi Video & Fiji Grocery. Regardless of whom the ownership of a store may utilize to handle store business (i.e., regardless of whether a store owner, store manager, store clerk, friend, family member, etc. was involved in the violative transactions), ownership is accountable for the proper handling of SNAP benefit transactions.

Prior to becoming authorized to participate in the SNAP on July 25, 2006, the Appellant completed and submitted a SNAP Application for Retail Stores. The SNAP Application contained a section indicating that the person(s) signing the Application understood and agreed to ensure that store employees follow the SNAP rules and regulations and that the person(s) accepts responsibility for any SNAP violations that may occur at the store that were committed by any of the store's employees---paid, unpaid, new, temporary, full-time, part-time, etc. The SNAP Application also included a section that contained a statement which acknowledged that the person(s) signing the Application was aware that violations of program rules could result in fines, legal sanctions, withdrawal, or disqualification of the store. In addition, the Appellant was provided with program training and reference materials which reinforced the statements included in the SNAP Application.

The regulations establish that an authorized food store may be disqualified from participating in the program when the store fails to comply with the Act or regulations because of the wrongful conduct of an owner, manager, or someone acting on their behalf. In this case, the individual who committed the SNAP violations was not specifically identified during the investigation. A six month disqualification is the appropriate sanction for violations which result from employees not being fully aware of the SNAP rules, the carelessness of employees, or due to inadequate supervision by the store owner. As 7 CFR § 278.6(e)(5) of the SNAP regulations states, "Disqualify the firm for six months if ... the evidence shows that personnel of the firm have committed violations ... due to the carelessness or poor supervision by the firm's ownership or management". The Appellant's implied contention that the SNAP violations were inadvertently

committed by a store employee without its knowledge or without intent cannot be accepted as a valid basis for diminishing the penalty. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of the USDA.

### **No Prior Violations**

The Appellant contends that in the thirteen years that the store has been participating in the SNAP, many investigators have routinely checked the store. None have been able to detect any fraudulent behavior or activity since 2011, where even the investigator at the time concluded that the sale of nonfood items took place inadvertently. However, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

### **Corrective Action**

The Appellant contends that the owner will ensure that all temporary employees are trained on the SNAP rules in the future. The Appellant has an effective policy and program to prevent trafficking, as at all other instances, the owner is personally present to oversee any SNAP transactions taking place.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken or will take corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Financial Hardship**

The Appellant contends that a SNAP disqualification will impose a financial hardship on the firm. However, there is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. To allow store ownership from being excused from assessed administrative penalties based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully

with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, the Appellant's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Case Law**

The Appellant contends that while generally food store owners are responsible for acts of their employees, Kashif v. U.S., Case No. 14-cv-30180-MGM, 2016 WL 3886164 (D. Mass. May 12, 2016), the person who rang up the items were not store employees. They were also not, "personnel of the firm". 7 CFR 278.6(e)(1)(i). Because "personnel" is not defined in the regulations or statute, the ordinary meaning of the word governs. United States v. Edge, 989 F.2d 871, 878 (6<sup>th</sup> Cir. 1993). "Personnel" is "a body of persons employed in some service" or "a body of employees that is a factor in business administration". Webster's Third New International Dictionary 1687 (1971).

With regard to the case laws cited by the Appellant, it is beyond the scope and authority of this review to determine the applicability of same. This review is limited to consideration of whether or not the Retailer Operations Division duly adhered to the Food and Nutrition Act of 2008, as amended, and the implementing regulations, and whether or not the action taken is sustainable by a preponderance of the evidence. Therefore, the application of any judicial precedent is better addressed via judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

### **CIVIL MONEY PENALTY**

The Appellant contends that a SNAP disqualification will impose a hardship on the SNAP customers who depend upon the store for an important source of food.

The Retailer Operations Division determined that the Appellant was not eligible for a hardship civil money penalty (CMP) under 7 CFR § 278.6(f)(1). That regulation reads, in part, "FNS may impose a civil money penalty as a sanction in lieu of disqualification when . . . the firm's disqualification would cause hardship to [SNAP] households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices." [Emphasis added]. **5 U.S.C. § 552 (b)(7)(E).**

Based on the evidence, the disqualification of Ravi Video & Fiji Grocery would not cause a hardship to SNAP recipients in the area, as opposed to a mere inconvenience; therefore, the Retailer Operations Division's decision not to assess a hardship CMP in lieu of a six month disqualification is sustained as appropriate under 7 CFR § 278.6(f)(1).

### **CONCLUSION**

It is therefore established that the violations as described in the letter of charges did in fact occur at Ravi Video & Fiji Grocery warranting a disqualification of six months in accordance with 7 CFR § 278.6(e)(5). That regulation states that FNS shall "disqualify the firm for 6 months if it is

to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as, but not limited to, the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management". Therefore, the decision to impose a six month disqualification, the least severe penalty allowed by regulation, against Ravi Video & Fiji Grocery, the Appellant firm, is appropriate and the action is sustained.

In accordance with the Food and Nutrition Act of 2008 and the regulations there under, the six month period of disqualification shall become effective thirty (30) days after receipt of this letter. A new application for participation may be submitted by the firm ten (10) days prior to the expiration of this six month period.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, FNS is releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

LORIE L. CONNEEN  
Administrative Review Officer

May 8, 2019